

LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS) ADDENDUM 1

10.00AM, TUESDAY, 30 JANUARY 2024

VIRTUAL

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ADDENDUM 1

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Acoustic South East



Variation of Premises Licence – Persia Grill, Hove

Report by: Scott Castle BSc (Hons) CEnvH, MCIEH PGDip: Acoustics MIOA

Date: 24/01/2024

Project: J3786

Issue 1

Site: **126 Church Road, Hove**

Client: **Persia Hove**

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Issue 1	24/01/2024	Original Issue
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1 Introduction and Executive Summary

Acoustic South East have been appointed to undertake an acoustic assessment to support a licensing application. Specifically, it is understood that the restaurant premises at 126 Church Road, Hove have been extended into the first-floor premises and accordingly, a premises license under the Licensing Act 2003 is required to cover the additional floor space.

Standards and guidance referenced for this assessment include:

- BS8233 (Sound insulation and noise reduction for buildings) 2014
- Brighton and Hove City Council, Statement of Licensing Policy 2021
- BSEN ISO9921:2003- *Ergonomics – Assessment of Speech Communication*
- Licensing Act 2013

The client's application seeks only alcohol in the extended first-floor restaurant. The extension does not generate any changes to how the ground floor premises are operated with the same hours of use and no regulated entertainment or requirements for music.

Brighton and Hove City Council's Statement of Licensing Policy (2021) has been reviewed and narrative provided to ensure that the application is considered in context.

The likely areas whereby sound might escape from a restaurant premises have been listed and discussed within the report without any concerns identified.

The first-floor extension is not overlooked directly by any habitable rooms (the one window on the Northern façade of [REDACTED] is understood to be a bathroom or stairwell). From previous experience (Dec 2017 measurements), the likely sound energy break out from the first floor extension area would be 29dB(rounded) below the measured background of 55dB $L_{A90,15minutes}$ for the site. At such low noise levels, this would be inaudible outside, let alone inside the nearest residential demise.

Whilst the roof sound insulation may be a conservative estimate as it does not include for any weatherproofing layers. Even with the conservative estimate, the sound pressure level just outside the roof without any distance attenuation is still lower than the background sound pressure level measured at the adjacent restaurant (Hixon Green) close to the Northern façade of [REDACTED]

Whilst a letter of representation has been received, the contents and more specifically, the concerns over "*Prevention of Public Nuisance*" from the extension of the premises licence to cover the first-floor restaurant are easily dismissed through this report.

Noise grounds and more specifically, "*The Prevention of Public Nuisance*" are not grounds for a refusal of the premises licence at Persia Grill, Hove, 126 Church Road, Hove.

2 Context, Noise Criteria & Noise Assessment Methodology

2.1 Context

It is understood that Persia Hove have extended their business premises into the first-floor area and have applied to Brighton and Hove City Council to have their premises licence amended.

2.2 Licensing Context

It is relevant to note that the client's application is merely to allow alcohol for upstairs diners in their restaurant.

The relevant licencing objectives for consideration by a licensing panel are as follows and taken from <https://www.brighton-hove.gov.uk/business-and-trade/licensing-and-gambling/premises-licences>

- Prevention of Crime & Disorder
- Prevention of Public Nuisance
- Protection of Children from harm
- Public Safety

Of interest for this specific application is the "Prevention of Public Nuisance".

It is relevant to note that the licensing, nuisance and planning regimes, whilst each seeking similar aims, are all independent regimes of one another.

The current hours of use are as follows and are not proposed to change.

- Monday to Saturday 12-11
- Sunday 12-10

2.3 Brighton and Hove City Council Licensing Statement 2021

The following text has been taken from Brighton and Hove City Councils website with specific reference to the prevention of public nuisance:

<https://www.brighton-hove.gov.uk/business-and-trade/licensing-and-gambling/statement-licensing-policy-2021#tab--6-prevention-of-public-nuisance>

Prevention of Public Nuisance

The following details and measures are intended to address the need for the prevention of public nuisance which may be associated with licensed premises and certificated club premises:

6.1.1 *In determining applications for new and varied licences, regard will be had to the location of premises, the type and construction of the building and the likelihood of nuisance and disturbance to the amenity of nearby residents by reason of noise from within the premises, as a result of people entering or leaving the premises or from individuals or groups of customers gathered outside (eg in order to smoke).*

6.1.2 *Applications for new licences or for the extension in size of licensed premises should not normally be granted if the premises will use amplified or live music and operate within or abutting premises containing residential accommodation except that occupied by staff of the licensed premises. A condition may be imposed on new licences that entertainment noise shall be inaudible in any residence. Noise emanating from within licensed premises should not normally be audible outside.*

6.1.3 *Installation of sound limiting equipment and sound insulation may be required to minimise disturbance to the amenity of nearby residents by reason of noise from the licensed premises.*

6.1.4 *Generally, regulated entertainment in the open air including tents and marquees should have a maximum closure hour of 2300. Earlier hours may be imposed in sensitive open spaces or near residential areas. The Licensing Authority will have regard to Noise Council guidance.*

6.1.5 *In determining applications for new licences or extensions in hours or terminal hours of licensed premises, regard will be had to late night public transport availability and location of taxi ranks to aid dispersal of customers.*

6.1.6 *Reasonable controls are available to all premises operators to minimise the impact of noise from customers outside. The council's Environmental Health Department has issued guidance on a number of steps that can be taken in this respect which are endorsed by this policy (see 6.2 below)*

The City Council requirements are noted and the following summary is provided to ensure that the application is properly considered in context :

1. The premises licence variation is for the first floor of an existing restaurant. Two commercial premises are located either side (Hixon Green to the East and Franco Manca to the West).
2. There are no proposals for any live music or regulated entertainment
3. Noise emanating from within the licensed premises should not normally be audible outside. This will be demonstrated by this report.
4. There are no requirements for sound limiting equipment, as only background noise is played and no regulated entertainment.

2.4 Site Location

The application site is detailed in red in Figure 1 with a more specific first floor detailed in Figure 2 below.

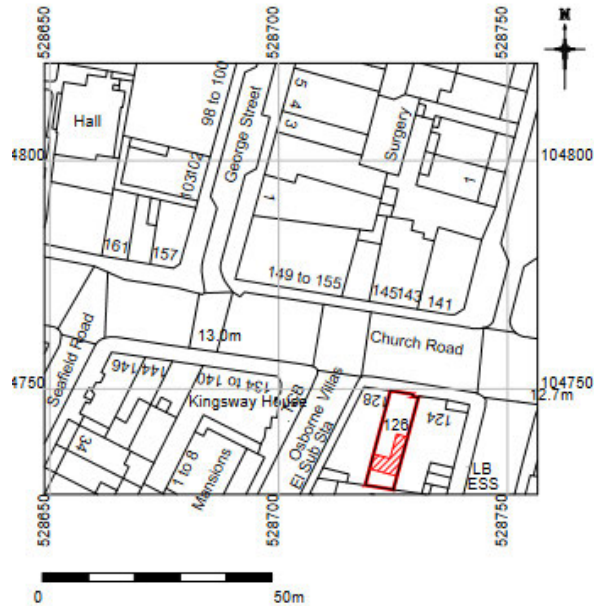


Figure 1. Site Location

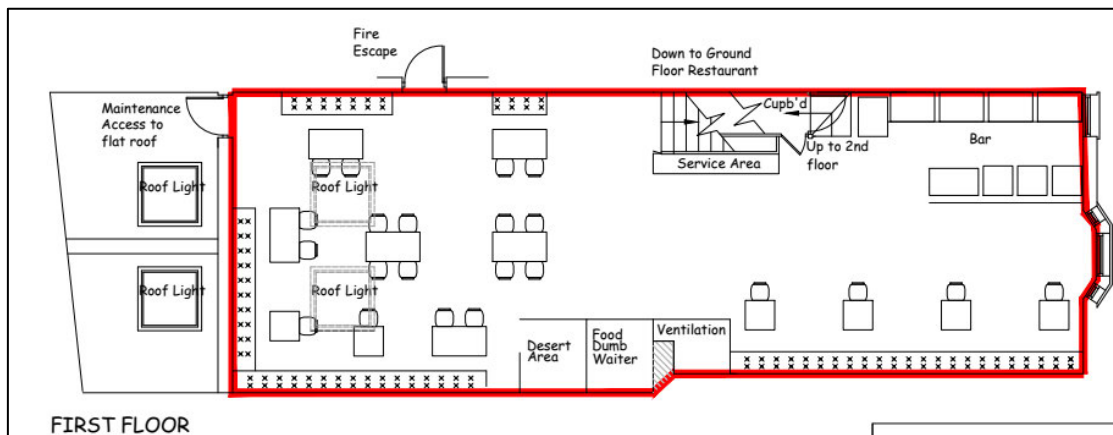


Figure 2. Proposed First Floor Extension

It is relevant to note that for a City Centre location such as Hove, with a night time economy, there may well be patrons that leave other licensed premises and there is some expectation of this in terms of locality. Attention is drawn to case law for Patel vs St Albans regarding reasonable expectations around living near to a public house with beer garden.

The fact that the representation letter author reports that they already experience noise from individuals, albeit not necessarily linked to 126 Church Road serves to prove the point made. Notwithstanding this, the report provides data indicating that noise from the premises is unlikely to be a problem.

2.5 Representation Letter

It is noted that a letter of representation has been made to the licensing authority, in this case, Brighton and Hove City Council. For reference, an abridged version is presented in Appendix A with personal details removed. The relevant items are as follows:

- That the area does not require further night life.
- That the first-floor extension will have a direct impact on the quality of life of the nearby occupants
- Concerns over planning consent
- It is stated that the authors “already suffer from late night revellers leaving licenced premises and going home noisily. It is not unusual to hear singing at 11pm at weekends”.

2.6 Closest Residential Property

The closest residential receptors are likely [REDACTED]. Habitable windows do not directly overlook the first-floor extension. The rear of the first-floor extension to [REDACTED] has been measured as 5.2m in distance.

3 Likely Sound Sources from a Restaurant Premises

Sound sources from a restaurant can be variable and include the following:

- Diners Entering and Leaving the Premises
- Deliveries
- Diner’s smoking
- External Plant Noise
- Internal Patron Noise
- Noise from music/entertainment
- Noise escape through open windows/doors
- Use of external areas

These are considered in detail as follows:

3.1 Diners Entering and Departing the Premises

The main entrance to the restaurant is on New Church Road and sheltered from view from [REDACTED]

3.2 Deliveries

Deliveries to the site will not change as a result of the first-floor extension.

3.3 Patrons Smoking

Patrons are encouraged to smoke on New Church Road, away from residential areas. This has always been the case and is not proposed to be changed.

3.4 External Plant Noise

There is no plant associated with the first-floor extension. Any flues from the kitchen or existing plant remain unchanged and will not generate any new sound sources.

3.5 Internal Patron Noise

Through discussion with the client, as a worst case it has been assumed that there are 40 individuals in the first-floor restaurant, including 2 staff and background music. A restaurant layout would normally determine that diners would be sat at a table with at least one individual speaking and others listening. However, to present a worst-case scenario, the ratio of speaker to listener has been assumed as 1:1. It is also assumed that with 42 individuals, 21 will be speaking of which 11 will be at normal level and 10 at a raised vocal effort.

The relevant standard for consideration of speech levels is BSEN ISO9921:2003 “*Ergonomics – Assessment of Speech Communication*”. The document suggests that where an individual is talking at a normal level, this is equivalent to 60dB $L_{Aeq,T}$ at 1m and where a raised voice is noted, this is 66dB $L_{Aeq,T}$ at 1m.

It will be relevant to consider 42 persons and background music, the latter of which is played at a level that it is considered background and not intrusive of conversation, which has been taken to be 70dB L_{Aeq} , at 1m.

Inside the first-floor space, the following sound sources will be apparent:

Patrons speaking at normal vocal effort – 70.4dB $L_{Aeq,T}$ ($60+10*\log(11)$)

Patrons speaking at raised vocal effort – 76dB $L_{Aeq,T}$ ($66+10*\log(10)$)

Background Music – 70dB $L_{Aeq,T}$

The combined internal sound pressure level from the three sources will be logarithmically summed as 77.8dB $L_{Aeq,T}$

It is assumed as a worst case that a reverberant finish is applied with numerous hard surfaces, which may further increase the internal sound pressure level by 6dB(A).

The internal sound pressure level is therefore considered as a worst case to be 83.8dB $L_{Aeq,T}$.

To provide some context, the sound pressure level in a busy Haymarket TGI Fridays was also measured to be 84dB $L_{Aeq,T}$. It is considered short term levels could be higher but apart from very busy times, the average hour sound pressure level may often be lower than the predicted sound pressure level of 84dB $L_{Aeq,T}$.

3.6 Noise from Music/Entertainment

Aside from background music whilst diners consume their meal, there are no proposals for entertainment. Background music as it states, it is heard only incidentally inside of the premises and should not be audible elsewhere. There are no plans for any DJ or similar. The client remains in control of the background music.

3.7 Noise Escape Through Open Windows and Doors

There are no windows and/or doors which would be opened as a result of the first-floor restaurant.

3.8 Use of External Areas

There are no proposed external areas to be considered as part of the licence variation to include the first floor.

4 Historic Acoustic Associates Sussex Limited Report – J2381 – 22/12/2017

An acoustic report was undertaken to measure ambient and background sound pressure levels close to [REDACTED] to support an application for a flue at Hixon Green at 124 Church Road, adjacent to Persia Hove.

This included long term monitoring (14-19 December 2017) as well as an attended visit on 19th December 2017.

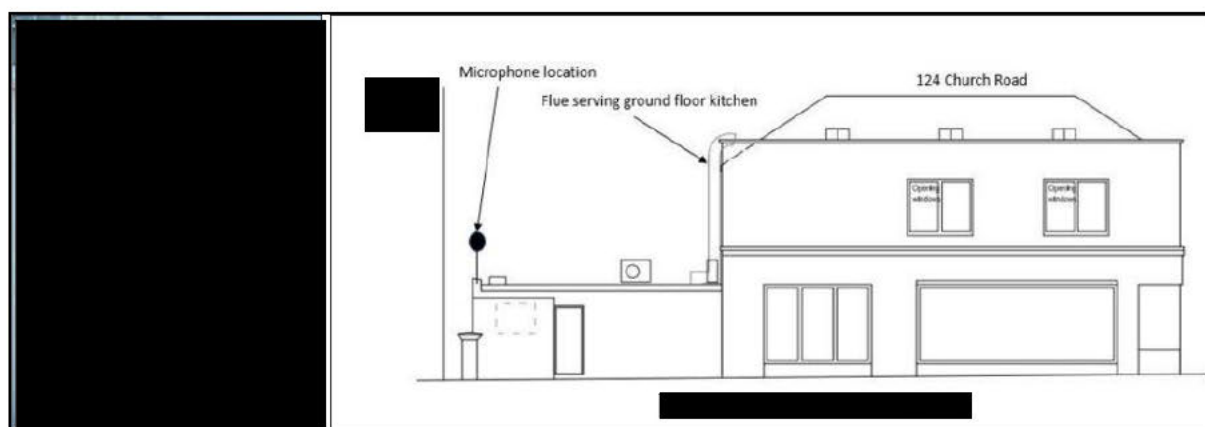


Figure 3. Historic Monitoring, December 2017

The relevant background sound pressure level for consideration is therefore 55dB $L_{A90,15minutes}$.

5 Likely Attenuation Through the Walls and Ceiling

The walls and ceilings are constructed from a timber finish which has been modelled in INSUL and likely to provide approximately 37dB of attenuation from inside to outside. These include 22mm OSB/Chipboard, 150mm joists and 18mm plyboard with 200mm of compressed mineral wool fibre. There are no windows apparent in the first-floor rear extension. The modelled attenuation is presented in Figure 4 below.

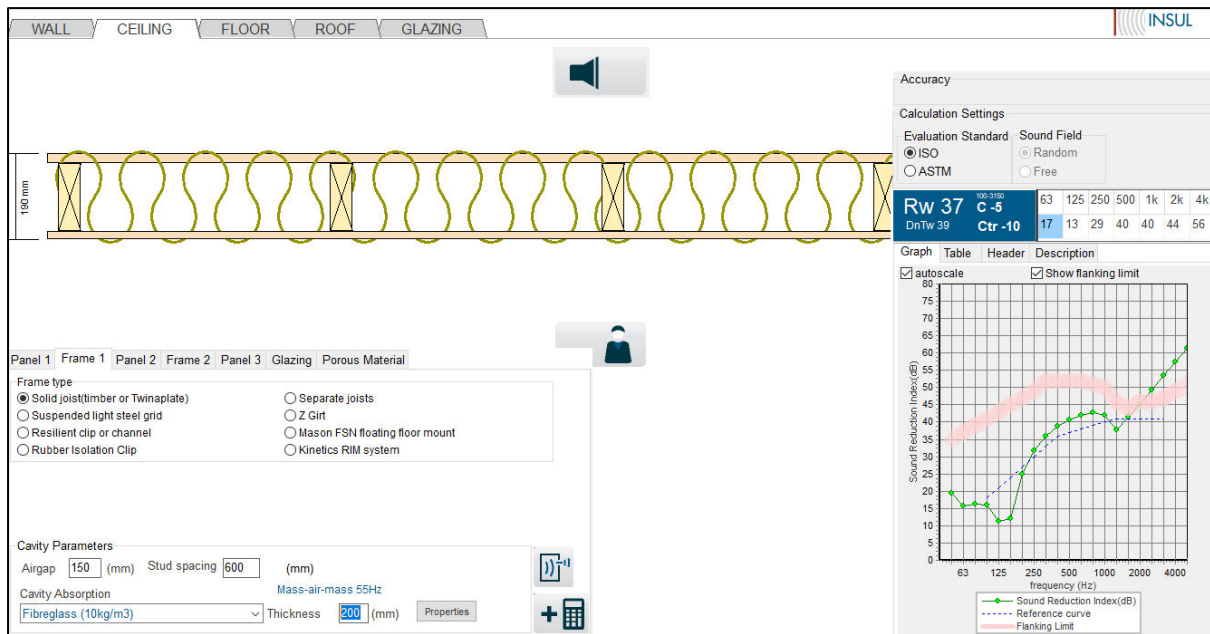


Figure 4. Materials Modelling Software Predictions-INSUL

6 Attenuation of Sound Through the First Floor Extension

As stated, the likely worst case internal reverberant sound pressure level inside the first-floor extension would be 83.8dB.

With 37dB of attenuation, this is likely to be 46.8dB externally. As sound energy enters the outside environment, a further 6dB loss is encountered with the external sound pressure level predicted to be 40.8dB.

The distance attenuation to the nearest wall, which does not contain any windows is likely to be 14.3dB. This would account for approximately 26.5dB $L_{Aeq,T}$ at the Northern wall of [REDACTED]

There would be further attenuation to be provided should the windows of the nearest resident be calculated as these are oblique to the first-floor extension.

The sound escaping the first-floor extension must be considered in context.

It was known from historic monitoring in 2017 at the [REDACTED] façade that the background sound pressure level was 55dB $L_{A90,15minutes}$.

The resulting patron noise would therefore be 28.5dB below the measured background sound pressure levels, rendering it inaudible and unlikely to present any cause for concern. Further attenuation would be applied for any losses through open or closed windows of adjacent noise sensitive receptors.

7 Conclusion

The client's application seeks only alcohol in the extended first-floor restaurant. The extension does not generate any changes to how the ground floor premises are operated with the same hours of use and no regulated entertainment or requirements for music.

Brighton and Hove City Council's Statement of Licensing Policy (2021) has been reviewed and narrative provided to ensure that the application is considered in context.

The likely areas whereby sound might escape from a restaurant premises have been listed and discussed within the report without any concerns identified.

The first-floor extension is not overlooked directly by any habitable rooms (the one window on the Northern façade of [REDACTED] is understood to be a bathroom or stairwell). From previous experience (Dec 2017 measurements), the likely sound energy break out from the first floor extension area would be 29dB(rounded) below the measured background of 55dB $L_{A90,15\text{minutes}}$ for the site. At such low noise levels, this would be inaudible outside, let alone inside the nearest residential demise.

Whilst the roof sound insulation may be a conservative estimate as it does not include for any weatherproofing layers. Even with the conservative estimate, the sound pressure level just outside the roof without any distance attenuation is still lower than the background sound pressure level measured at the adjacent restaurant (Hixon Green) close to the Northern façade of [REDACTED]

Whilst a letter of representation has been received, the contents and more specifically, the concerns over "*Prevention of Public Nuisance*" from the extension of the premises licence to cover the first-floor restaurant are easily dismissed through this report.

Noise grounds and more specifically, "*The Prevention of Public Nuisance*" are not grounds for a refusal of the premises licence at Persia Grill, Hove, 126 Church Road, Hove.

8 Representation Letter (Personal Details Removed)

Licence – 1445/3/2023/04770/LAPREV

126 Church Road Hove

We wish to lodge our strong opposition to this licence being issued on the following basis.

Prevention of Crime and Disorder

[REDACTED] [REDACTED]
[REDACTED]. This area of Hove is predominantly a residential area. We are seeing a gradual increase in the number of cafes and restaurants opening where retail outlets were formerly located, however, it is not an area for 'night life'. There is no precedent for two level reataurant in this stretch of Church Road, and we do not need one. We live in a 'special stress area' and already suffer from late night revellers leaving licenced premises and going home noisily. It is not unusual to hear singing at 11pm at weekends. This is bad enough. It would not be acceptable for this behaviour to occur later in the evening.

Point 3.2.2 of the Statement of Licencing Policy states "New and varied applications for premises and club premises certificates within the SSA will not be subject to the presumption of refusal, but operators will be expected to pay special attention when drawing up their operating schedules and to make positive proposals to ensure that their operation will not add to the problems faced in these areas." The applicant has not made any effort to address these points.

We are unsure if the applicant still wants to remove 'condition 5 of annex 2 from his licence (details unclear). If he does we would like to express our concern, as this states

'The premises will become a member of the BCRP, or similar scheme approved by the Licensing Authority that operates with radios and uses the Nightsafe & Yellow Card Scheme or similar reporting scheme'

Sadly, our this reflects our experience of the applicant. We have found him a difficult neighbour. He has been unwilling to work with us or other residents, and only ever wants to do the bare minimum of what is expected of him.

The applicant's lack of positive proposal regarding the SSA and his avoidance of participation in the BCRP or similar scheme sadly reflect our experience of his lack of concern for neighbours and crime prevention.

We are also somewhat surprised that he feels the need to expand, as the premises is rarely, if ever

full. However Since Persia opened, we have had repeated instances of people using our front garden to take drugs or drink. They have moved on when asked, but late-night revelry will only compound this problem. [REDACTED]

[REDACTED] The only reason is when people try and reach the rear of the building. The style of Persia is that of a pseudo nightclub, including a DJ deck which we can hear in our property.

The applicant recently withdrew application Licence – 1445/3/2022/02877/LAPREV. We were interested to note the concerns of Sussex Police regarding traces of cocaine found in Persia’s toilets, and the increased levels of crime in the period since this venue’s reopening.

Prevention of Public Nuisance

In addition to public nuisance points listed above, our garden is directly below the proposed first floor dining area. Our lounge is at the back of our flat. Noise from the first floor would directly impact our quality of life. His current planning permission prohibits this (although he has a history of ignoring planning permission!), and the first floor of Persia also does not have planning permission for commercial use, and an extension refused planning permission. In the event that a licence is granted, and given the licensees’ history of ignoring planning permission, we would like it explicitly stated that the upstairs extension is not licenced for any hours of operation.

The applicant has recently built an extension to the rear of the first floor on 126 Church road, despite having been refused planning permission. It is unclear whether this area is included in the proposed licence on current information online, but potentially takes the licence premises to within a few metres of our property and garden, with the attached potential for noise and disturbance.